

IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),)

Plaintiff,)

vs.)

FARMERS COOPERATIVE SOCIETY,)

Defendant.)

LAW NO. CVCV021451

CONSENT ORDER, JUDGMENT
AND DECREE

*[See pages following for
lawsuit petition filed 12-8-06]*

NOW on this (11th) day of December, 2006, the Court is presented with the Plaintiff's

Petition at Law seeking civil penalties and injunctive relief pursuant to Iowa Code sections 455B.191, 459.103(2), 459.603, and Iowa Code Supplement section 459A.502 (2005). The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and subject matter of this action and the parties consent to the entry of this Consent Order, Judgment and Decree.
2. The defendant admits the violations alleged in the petition.
3. By admitting these violations, the defendant does not concede, nor does the defendant waive its right to contest that the violations are applicable to a habitual violator determination under Iowa Code section 459.604.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant Farmers Cooperative Society shall pay a civil penalty of Forty Thousand and no/100 Dollars (\$40,000.00) for the violations admitted herein within ten (10) days of the entry of this Consent Order, Judgment and Decree. The defendant shall also pay interest

pursuant to Iowa Code section 535.3(1) on any unpaid balance. Payment of the civil penalty and any interest shall be made to the Clerk of the Iowa District Court for Sioux County.

2. Defendant Farmers Cooperative Society is permanently enjoined from further violations of Iowa Code sections 455B.186, 459.311(1), and 459.314(2); 567 Iowa Administrative Code 61.3(2), 65.2(3), 65.101(6), 65.101(9); Administrative Order No. 98-AFO-21/98-HC-07; and NPDES Permit No. 84-00-0-12.

3. The Court retains jurisdiction of this matter to ensure compliance with the terms of this order.

4. The costs of this action are taxed to the defendant in the amount of \$ _____.
(Clerk to enter).

(/S/ Judge James D. Scott)
JUDGE, Third Judicial District of Iowa

Approved as to form:

IOWA DEPARTMENT OF
NATURAL RESOURCES

FARMERS COOPERATIVE SOCIETY

S/
JEFFREY VONK
Director

S/
KENNETH EHRP
General Manager

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General

S/
TIMOTHY D. BENTON, AT0000843
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Environmental Law Division
Lucas State Office Bldg., Gr. Floor
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ATTORNEYS FOR PLAINTIFF
STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
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BEVING, SWANSON & FORREST, P.C.

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FARMERS COOPERATIVE SOCIETY

[Filed 12-8-06]

IN THE IOWA DISTRICT COURT FOR SIOUX COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

FARMERS COOPERATIVE SOCIETY,

Defendant.

LAW NO. CVCV 021451

PETITION AT LAW

COMES NOW Plaintiff State of Iowa ex rel., Iowa Department of Natural Resources (DNR), and for its claim against Defendant Farmers Cooperative Society states as follows:

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and the issuance of a permanent injunction against Farmers Cooperative Society for illegal discharges of manure to waters of the state and resulting water quality violations, failing to notify the DNR of a manure release, failing to retain manure at its facility, and land applying manure within 200 feet of a protected water source. All of these violations were committed at the 12,000 head open feedlot and confinement operation for cattle operated by Farmers Cooperative Society in Sioux County, Iowa.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America.

3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant Farmers Cooperative Society is an Iowa cooperative association with its principal place of business at 2818 - 390th Street, Sioux Center, Sioux County, Iowa.

JURISDICTION

Water Pollution Control Regulations

5. The DNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). Rulemaking authority for establishing water quality and effluent standards is contained in Iowa Code section 455B.173(2). Rule-making authority relating to disposal systems is contained in Iowa Code section 455B.173(3).

6. The dumping, depositing, or discharging of pollutants into any water of the state except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the DNR, is prohibited. Iowa Code § 455B.186.

7. A "water of the state" means "any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof." Iowa Code Supp. § 455B.171(37) (2005). Six Mile Creek and its tributary streams, watercourses, waterways and drainage systems are each a "water of the state" as defined in Iowa Code Supp. section 455B.171(37) (2005).

8. Cattle manure waste is a "pollutant" as defined in Iowa Code section 455B.171(18).

9. Surface waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance. 567 Iowa Admin. Code 61.3(2)"b".

10. Surface waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to animal life.

567 Iowa Admin. Code 61.3(2)“d”.

11. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

12. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (EPC), institute any legal proceedings, including an action for an injunction or temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(4).

Animal Feeding Operation Regulations

13. Rulemaking authority relating to the construction and operation of animal feeding operations is contained in Iowa Code sections 455B.173(13), 459.103(1), and Iowa Code Supp. section 459A.104 (2005). 567 Iowa Admin. Code 65 contains rules relating to animal feeding operations.

14. A “release” is “an actual, imminent or probable discharge of process wastewater, manure, open feedlot effluent, settled open feedlot effluent, or settleable solids from an open feedlot operation structure to surface water, groundwater, or an actual, imminent or probable discharge directly to a drainage tile line or intake resulting from storing, handling, transporting

or land-applying process wastewater, manure, open feedlot effluent, settled open feedlot effluent or settleable solids.” 567 Iowa Admin. Code 65.100.

15. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. Iowa Code § 459.311(1), 567 Iowa Admin. Code 65.2(3).

16. A person storing, handling, transporting, or land-applying manure, process wastewater, open feedlot effluent or settleable solids from an open feedlot operation who becomes aware of a release shall notify the DNR as soon as possible but not later than six (6) hours after the onset or discovery of the release. 567 Iowa Admin. Code 65.101(9).

17. A person shall not apply manure on land within 200 feet from a designated area unless the manure is injected or incorporated on the same date the manure was land-applied. Iowa Code § 459.314(2), 567 Iowa Admin. Code 65.101(6). A “designated area” means a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface tile inlet, drinking water well, designated wetland, lake, or water source. A “water source” means a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one (1) landowner is riparian. Iowa Code § 459.102(52).

18. The DNR and the Attorney General shall enforce the provisions of chapter 459 and 459A in the same manner as provided in chapter 455B, division I unless otherwise provided. Iowa Code § 459.103(3), Iowa Code Supp. § 459A.501 (2005).

19. A person who violates subchapter III of chapter 459, or chapter 459A shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603, Iowa Code Supp. § 459A.502 (2005).

FACTS

20. On March 20, 2006, the EPC voted to refer the matters described in paragraphs twenty-one (21) through twenty-seven (27) below to the Attorney General for purposes of initiating judicial enforcement proceedings against Farmers Cooperative Society.

21. Farmers Cooperative Society owns and operates a cattle open feedlot and confinement operation located in the SW 1/4 of Section 36, T96N, R46W, Plato Township, Sioux County, Iowa. Of the approximately 12,000 head of cattle fed and housed at the operation, 2,000 head are kept in open lots between four (4) confinement buildings with the remainder housed in the buildings. Manure from the confinement buildings is collected and stored in an anaerobic lagoon west of the confinement buildings. Manure from the open lots flows into a solid settling structure and the settled open feedlot effluent is then discharged through a 8 - 10 inch diameter PVC pipe to the anaerobic lagoon used by the confinement portion of the facility. The facility is approximately 3/8 mile from an unnamed tributary of Six Mile Creek.

22. On December 9, 1998, the DNR director issued Administrative Order No. 98-AFO-21/98-HC-07 (a copy of which is attached, marked Exhibit A, and incorporated by reference), requiring that Farmers Cooperative Society totally retain all wastes produced in confinement units between periods of waste disposal and prohibiting discharge of pollutants to a water of the state. Regarding the open feedlot portion of the operation, the Order directed that the facility be managed to prevent discharge of liquid manure in amounts that will cause pollution or violation of water quality standards until issuance of an operation permit. The

facility was directed to submit an application for an operation permit, and after issuance of the operation permit, to comply with minimum manure control requirements in the permit. Farmers Cooperative Society was directed to pay an administrative penalty of \$3,000.00. The Order was issued in response to a release of manure from the facility which reached Six Mile Creek. The pollution resulted in a fish kill which extended over 16 miles of Six Mile Creek and killed approximately 1,158 fish. Although Farmers Cooperative Society initially appealed the Order, the appeal was resolved through entry of a Consent Amendment to Administrative Order No. 98-AFO-21/98-HC-07 (a copy of which is attached, marked Exhibit B, and incorporated by reference), in which the facility agreed to pay an administrative penalty of \$2,000.00. Farmers Cooperative Society paid \$1,398.32 as restitution for the fish kill.

23. On October 6, 2000, the DNR issued NPDES Permit No. 84-00-0-12 (a copy of which is attached, marked Exhibit C, and incorporated by reference) to Farmers Cooperative Society for the feedlot portion of the operation. The permit requires inter alia that the facility provide retention of all manure flows from the feedlot areas and other manure-contributing areas resulting from the 25 year, 24 hour precipitation event.

24. On September 22, 2005, DNR officials received a complaint that manure was running off the Farmers Cooperative Society operation. On September 28, 2005 DNR officials investigated the facility. They observed a catch basin immediately south of the confinement buildings. They further observed manure from the open feedlot area flowing from the southeast corner of the catch basin through a culvert under a nearby roadway, then southwesterly across a bean field for 3/8 mile and then into the unnamed tributary of Six Mile Creek. Water in the tributary was cloudy for a distance of 1 mile until its confluence with Six Mile Creek. Samples

taken from the unnamed tributary at its confluence with Six Mile Creek, showed high levels of ammonia nitrogen (7.1 mg/l) and membrane fecal coliform (160,000 col/100 mL). No fish were observed.

25. On January 26, 2006, Farmers Cooperative Society notified DNR officials that an 18 inch manure transfer pipe had become plugged on January 25th, causing manure from all four (4) confinement buildings to discharge from a manhole located just west of the southernmost confinement building. The manure had flowed across a parking lot and into the nearby road ditch south of the facility.

26. On February 3, 2006, DNR officials observed manure solids from Farmers Cooperative Society being applied in a field in the NE¼ of Section 3, Center Township, approximately 1¼ mile west of the facility. The manure was being applied along side a stream which is an unnamed tributary of Mile Creek. DNR officials also observed manure solids along the stream which had previously been applied. None of the manure had been injected or incorporated.

27. On March 31, 2006, Farmers Cooperative Society notified DNR officials that a line had become plugged between a manhole and the anaerobic lagoon causing manure to overflow from the manhole south of the confinement building. DNR officials investigated the site on March 31. They observed that manure had flowed from the manhole into a road ditch south of the facility and then into the unnamed tributary of Six Mile Creek. Samples of the stream taken at the confluence with Six Mile Creek showed high levels of ammonia nitrogen (12 mg/l). No fish were observed.

VIOLATIONS

Water Pollution Control Violations

28. On and before September 22, 2005, cattle manure discharged from the Farmers Cooperative Society's facility into an unnamed tributary of Six Mile Creek in violation of Iowa Code section 455B.186(1), Administrative Order No. 98-AFO-21/98-HC-07, and NPDES Permit No. 84-00-0-12.

29. On or about March 31, 2006, cattle manure discharged from the Farmers Cooperative Society's facility into an unnamed tributary of Six Mile Creek in violation of Iowa Code section 455B.186(1) and Administrative Order No. 98-AFO-21/98-HC-07.

30. On and before September 22, 2005, Farmers Cooperative Society caused exceedance of applicable water quality standards in violation of 567 Iowa Admin. Code 61.3(2)"b" and "d".

31. On or about March 31, 2006, Farmers Cooperative Society caused exceedance of applicable water quality standards in violation of 567 Iowa Admin. Code 61.3(2)"b" and "d".

Animal Feeding Operation Violations

32. On or before September 22, 2005, Farmers Cooperative Society failed to notify the DNR of a release of manure from the open feedlot portion of its cattle operation in violation of 567 Iowa Admin. Code 65.101(9).

33. On or about January 26, 2006, Farmers Cooperative Society failed to retain manure generated from the confinement portion of its cattle operation in violation of Iowa Code section 459.311(1) and 567 Iowa Admin. Code 65.2(3).

34. On or before February 3, 2006, Farmers Cooperative Society applied manure within 200 feet of a designated area in violation of Iowa Code section 459.314(2) and 567 Iowa Admin. Code 65.101(6).

35. On or about March 31, 2006, Farmers Cooperative Society failed to retain manure generated from the confinement portion of its cattle operation in violation of Iowa Code section 459.311(1) and 567 Iowa Admin. Code 65.2(3).

PRAYER FOR RELIEF

WHEREFORE, State of Iowa ex rel., Iowa Department of Natural Resources requests that the Court:

a. assess a civil penalty against Defendant Farmers Cooperative Society pursuant to Iowa Code sections 455B.191(1), 459.103(3), 459.603 and 459A.502 for each day of violation of Iowa Code sections 455B.186(1), 459.311(1), 459.314(2); 567 Iowa Admin. Code 61.3(2)"b", 61.3(2)"d", 65.2(3), 65.101(6), 65.101(9); Administrative Order No. 98-AFO-21/98-HC-07; and NPDES Permit No. 84-00-0-12, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation; and

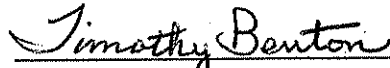
b. issue a permanent injunction enjoining Defendant Farmers Cooperative from any violation of Iowa Code sections 455B.186(1), 459.311(1), 459.314(2); 567 Iowa Admin. Code 61.3(2)"b", 61.3(2)"d", 65.2(3), 65.101(6), 65.101(9); Administrative Order No.98-AFO-21/98-HC-07, and NPDES Permit No. 84-00-0-12.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General


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ATTORNEYS FOR PLAINTIFF

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

**FARMERS CO-OPERATIVE
SOCIETY
SIOUX COUNTY**

ADMINISTRATIVE ORDER**NO. 98-AFO- 21****NO. 98-HC- 07**

**TO: FARMERS CO-OPERATIVE SOCIETY,
SIOUX CENTER, IOWA
c/o Kenneth Ehrp, Reg. Agent
317 3rd St., N.W.
Sioux Center, IA. 51250**

I. SUMMARY

This Order requires you to comply with minimum manure control requirements until an operation permit is issued at which time manure control requirements in the permit shall be followed; within 90 days, to submit plans and specifications prepared by a professional engineer as specified herein; to submit an application for an operation permit within 30 days; to submit a manure management plan within 90 days; to comply with all hazardous condition notification requirements; and to pay an administrative penalty of \$3,000.00*, subject to your appeal rights stated in Part VII of this Order.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Ken Hassenius
IDNR Field Office #3
1900 N. Grand Ave.
Spencer, IA 51301
Ph: 712/262-4177

Relating to appeal rights:

Randy Clark
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8891

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

* This penalty is in addition to restitution in the amount of \$1,398.32 which must be paid to the Department for the value of the fish involved in this case. This claim will be communicated in a separate document.

EXHIBIT A

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: FARMERS CO-OPERATIVE SOCIETY, SIOUX CENTER**

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any Order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1, and the rules adopted or permits issued pursuant thereto; Iowa Code sections 455B.381-388 and the rules promulgated thereto relating to hazardous conditions; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Farmers Co-Operative Society, Sioux Center, Iowa (Farmers) owns and operates a cattle confinement and open feedlot operation located in the SW¼ of Section 36, T96N, R46W (Plato Township), Sioux County, Iowa. Of the approximately 12,000 head currently fed and housed at the operation, several hundred head are kept in open lots between the confinement buildings with the remainder housed in roofed enclosures. Manure is collected and stored in an anaerobic lagoon located west of the confinement buildings. Recirculated wastewater from the lagoon is used to flush the below-building pits and manure solids are removed by a screening process (solids recovery system) before the liquid manure is discharged to the lagoon.

2. On June 16, 1998, staff from Department Field Office #3 and Department wildlife and fisheries personnel investigated a complaint received late the previous day of a fish kill in Sixmile Creek near Sioux Center. Fisheries biologists concluded the fish kill extended over approximately 16 miles of Sixmile Creek and that approximately 1,158 fish, valued at \$1,398.32, were killed. Utilizing ammonia field test kits and manure odor, the likely source of the fish kill was traced to an unnamed Sixmile Creek tributary that receives drainage from the Farmers operation. While Department staff observed evidence that a small runoff control basin that settles solids for the open lots had recently overflowed during recent rainfall events, it was not thought to be the only source of the ammonia causing the fish kill. Follow-up inspections by Department personnel on June 18 and 24, 1998, revealed corn and oat plant damage and manure solids in the area receiving drainage from the solids recovery system. Farmers officials expressed the desire to question its employees to determine the cause of the manure discharge. On June 25, 1998, Farmers officials reported that a pipe coupling in the solids recovery system loosened during the evening on June 14, 1998, resulting in the discharge of an unknown quantity of manure to the Sixmile Creek tributary. Farmers employees reportedly repaired the equipment upon discovering the incident and did not think the release significant enough to report the event to Farmers management.

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ISSUED TO: FARMERS CO-OPERATIVE SOCIETY, SIOUX CENTER**

3. On or about November 6, 1993, Department Field Office #3 documented a manure discharge from this operation to Sixmile Creek. No fish kill was documented but Farmers was notified in writing that it had violated Iowa Code section 455B.186 and 567 IAC 65.2(3).

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Inasmuch as a permit has not been issued for this facility, the foregoing facts establish that this provision has been violated.

2. Iowa Code section 455B.173 authorizes the Environmental Protection Commission to adopt rules establishing water quality and discharge standards, relating to the operation and construction of animal feeding operations and the conditions under which the Department shall issue permits to such operations, and relating to the disposal of manure resulting from animal feeding operations, among other things. The Commission has done so at 567 IAC chapters 60-65. Chapter 65, in particular, relates to animal feeding operations:

3. Iowa Code subsection 455B.201(1) and 567 IAC 65.2(3), require that all manure produced in a confinement feeding operation be retained between periods of waste disposal and prohibit the discharge of manure into a water of the state or into a tile line that discharges to water of the state. 567 IAC 65.2(3) also requires that manure be removed from manure control facilities as necessary to prevent overflow or discharge; that manure be removed from lagoons and earthen manure storage basins as necessary to maintain a minimum of two feet of freeboard in the structure; and that manure be removed as needed prior to periods when manure application cannot be conducted (due to inclement weather conditions, lack of available land disposal areas, or other factors) in order to assure that adequate capacity exists in the manure storage facilities. The above facts disclose violation of one or more of these statutory and rule provisions.

4. A portion of this operation is an "open feedlot" as defined in 567 IAC 65.1. Manure from open feedlots is a pollutant, and the above-described waters are waters of the state, as those terms are defined in Iowa Code section 455B.171. 567 IAC 65.2(1) requires that the minimum level of manure control for any animal feeding operation shall be the removal of settleable solids from the manure prior to discharge to waters of the state. Greater control may be required to achieve adequate water pollution control in a particular situation. Manure control may be accomplished through use of settling basins, terraces, diversions or other solids settling facilities. 567 IAC 65.2(7) requires manure to be removed from control facilities and applied to land so as to not allow surface or ground water pollution. The foregoing facts indicate violation of one or more of these criteria.

**IOWA DEPARTMENT OF NATURAL RESOURCES
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ISSUED TO: FARMERS CO-OPERATIVE SOCIETY, SIOUX CENTER**

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The above facts disclose violation one of more of these criteria.

6. 567 IAC 65.4 provides that the Department may evaluate any animal-feeding operation to determine if wastes from the operation: are being discharged into a water of the state and the operation is not providing the applicable minimum level of waste control; are causing or may reasonably be expected to cause pollution of a water of the state; are causing or may reasonably be expected to cause a violation of state water quality standards. If any of these conditions exist, the operation is required, upon notification from the Department, to apply for an operation permit (subject to animal capacity limitations) and institute necessary remedial actions to eliminate the conditions. Based on the foregoing facts and conclusions, the Department further concludes that one or more of the above-described conditions exist at this facility and hereby notifies Farmers that it is required to apply for an operation permit and undertake remedial measures as specified in section V(3-5), below.

7. Iowa Code section 455B.386 and 567 IAC 131.2 require that the Department and local law enforcement authorities be notified within 6 hours after the onset or discovery of a hazardous condition. "Hazardous condition" is defined in 567 IAC 131.1 as any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which because of its quantity, strength or other factors creates an immediate or potential danger to the public health or safety or to the environment. Manure is a "hazardous substance" as that term is defined in Iowa Code subsection 455B.381(5) and the above facts document that manure was actually spilled on the land and that it created a potential danger to the public health and safety or to the environment. The above facts also disclose that Farmers violated these statutory and rule provisions by failing to notify the Department of this hazardous condition within 6 hours.

V. ORDER

THEREFORE, you are required to comply with the following provisions in order to redress and prevent violations of the above-cited provisions of law:

1. For the confinement portion of this operation, totally retain all wastes produced in confinement units between periods of waste disposal; remove wastes as necessary to prevent overflow or discharge and to maintain a minimum freeboard of two feet, and dispose of the removed wastes on land in a manner which will not cause pollution. Discharge of pollutants to a water of the State, directly or indirectly, is prohibited. Regarding the open feedlot portion of this operation, immediately and until issuance of an operation permit for this operation, manage all facilities to prevent discharge of manure solids to waters of the state and to prevent discharge of liquid manure in amounts

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ISSUED TO: FARMERS CO-OPERATIVE SOCIETY, SIOUX CENTER**

that will cause pollution or violation of water quality standards. Manure shall be frequently removed from control facilities and applied to land in a manner that will not cause surface or ground water pollution. After the issuance of an operation permit for this operation, you are required to comply with minimum manure control requirements specified in said permit.

2. Comply with all requirements of Iowa law pertaining to notification of the Department of hazardous conditions, including manure spills.

3. Within 30 days of receipt of this Order, submit an application for an operation permit as required in 567 IAC 65.5, and, within 10 days of the Department's request, provide any additional information required by the Department to issue an operation permit.

4. Within 30 days of receipt of this Order, notify Department Field Office #3 that you have retained a registered professional engineer with manure management experience for the purpose of providing the following plans and specifications.

Within 90 days of receipt of this Order, submit to the Department detailed plans and specifications of all manure control systems at your operation. The plans and specifications for the open feedlot portion of the operation shall comply with the minimum manure control requirements in 567 IAC 65.2(2) and shall include the design of a system or systems to provide total retention of runoff resulting from a 25-year, 24-hour rainfall event. If the plans call for facility modifications or improvements, you are required to apply for a construction permit at the time the plans and specifications are submitted and all manure control improvements shall be installed within 60 days of receipt of the construction permit.

5. Within 90 days of receipt of this Order, submit a manure management plan (MMP) for this facility which includes information specified in 567 IAC 65.18(2). Thereafter, update and maintain compliance with the MMP as specified in 567 IAC 65.18(4) and (5).

6. A penalty of \$3,000.00 shall be paid to the Department within 60 days of receipt of this Order, subject to your appeal rights stated in Part VII of this Order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for violations of water pollution control laws; more severe criminal sanctions are also provided. Iowa Code section 455B.386 authorizes the assessment of a civil penalty of up to \$1,000.00 for violation of hazardous condition notification requirements.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed

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administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; 567 IAC Chapter 10. Pursuant to rule 567 IAC 10.2, the Department has determined that the most equitable and efficient means of addressing the above-cited violations is the issuance of an administrative Order with a penalty. The administrative penalty assessed by this Order is effective 30 days from your receipt of this Order, unless you appeal this proposed penalty within that time, as provided in Part VII of this Order. The penalty shall be paid within 60 days of your receipt of this Order, unless you file a timely appeal. The administrative penalty assessed by this Order is based upon documented violations of water pollution and hazardous condition statutory or rule provisions on at least one day, which would warrant a maximum civil penalty of \$6,000.00. The administrative penalty is determined as follows:

a. Economic Benefit. The Department is not aware of any financial savings resulting from this incident. Therefore, no amount is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves actual impact to water quality, including the loss of aquatic life, which was exacerbated by the failure to report a hazardous condition. Therefore, \$2,500.00 is assessed for this factor.

c. Culpability. This matter appears to involve negligent rather than intentional acts. However, based upon the 1993 incident and resulting notice of violation, Farmers should have been fully aware of manure disposal requirements and the need to closely monitor manure management facilities. Therefore, \$500.00 is assessed for this factor.

VII. APPEAL RIGHTS

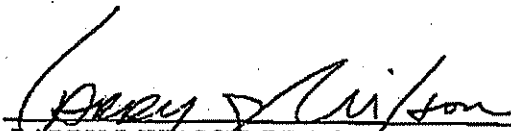
Pursuant to Iowa Code subsection 455B.175(1) and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of additional administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. The Department reserves the

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: FARMERS CO-OPERATIVE SOCIETY, SIOUX CENTER

right to request that the Attorney General initiate legal action based on the violations alleged in this Order as well as any subsequent violations if the Order is violated.


LARRY J. WILSON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 09 day of
December, 1998.

SENDER: *Clark/120*

* Complete items 1 and/or 2 for additional service.
 * Complete items 3, 4a, and 4b.
 * Print your name and address on the reverse of this form so that we can return this card to you.
 * Attach this form to the front of the mailpiece, or on the back if space does not permit.
 * Write "Return Receipt Requested" on the mailpiece below the article number.
 * The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
 1. ☐ Addressee's Address
 2. ☐ Restricted Delivery
 Consult postmaster for fee.

3. Article Addressed to:
 FARMERS COOPERATIVE SOCIETY
 SIOUX CENTER IOWA
 KENNETH EHRP REG AGENT
 317 3RD STREET NW
 SIOUX CENTER IA 51250

4a. Article Number
 2101462565

4b. Service Type
☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

5. Date of Delivery
 12-11-98 2-12

6. Received By: (Print Name)
Kue

7. Signature: (Addressee or Agent)
[Signature]

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Is your RETURN ADDRESS completed on this reverse side?
 Thank you for using Return Receipt Service.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

**FARMERS CO-OPERATIVE
SOCIETY
SIOUX COUNTY**

**CONSENT AMENDMENT TO
ADMINISTRATIVE ORDER**

**NO. 98-AFO-21
NO. 98-HC-07**

**TO: FARMERS CO-OPERATIVE SOCIETY,
SIOUX CENTER, IOWA
c/o Kenneth Ehrp, Reg. Agent.
317 3rd St., N.W.
Sioux Center, IA 51250**

Farmers Co-Operative Society, Sioux Center, Iowa (Farmers), and the Department of Natural Resources hereby consent that Administrative Order No. 98-AFO-21/98-HC-07, issued December 9, 1998, be and hereby is amended as follows:

1. Section "I. SUMMARY", first paragraph, is amended to read as follows:

This Order requires you to comply with minimum manure control requirements until an operation permit is issued at which time manure control requirements in the permit shall be followed; by May 15, 1999, to submit plans and specifications prepared by a professional engineer as specified herein; to submit an application for an operation permit by February 15, 1999; to comply with all hazardous condition notification requirements; and to pay an administrative penalty of \$2,000.00.

2. Section "III. STATEMENT OF FACTS" is amended by adding paragraph 4 as follows:

4. On December 18, 1998, Farmers paid \$1,398.32, as required by the Department, as restitution for the fish killed in this matter.

3. Section "V. ORDER" is amended by rescinding paragraph 5 and modifying paragraphs 3, 4 and 6 to read as follows:

EXHIBIT B

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: FARMERS CO-OPERATIVE SOCIETY, SIOUX CENTER**

3. By February 15, 1999, submit an application for an operation permit as required in 567 IAC 65.5, and, within 10 days of the Department's request, provide any additional information required by the Department to issue an operation permit.

4. By February 15, 1999, notify Department Field Office #3 that you have retained a registered professional engineer with manure management experience for the purpose of providing the following plans and specifications.

By May 15, 1999, submit to the Department detailed plans and specifications of all manure control systems at your operation. The plans and specifications for the confinement portion of the operation shall include, but not be limited to, an evaluation and design of a system for the containment of any manure spill from the solids recovery system. The plans and specifications for the open feedlot portion of the operation shall comply with the minimum manure control requirements in 567 IAC 65.2(2) and shall include the design of a system or systems to provide total retention of runoff resulting from a 25-year, 24-hour rainfall event. If the plans call for facility modifications or improvements, you are required to apply for a construction permit at the time the plans and specifications are submitted and all manure control improvements shall be installed within 60 days of receipt of the construction permit.

5. A penalty of \$2,000.00 shall be paid to the Department by February 11, 1999.

4. Section "VI. PENALTY", paragraph 2b, is amended to read as follows:

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves actual impact to water quality, including the loss of aquatic life, which was exacerbated by the failure to report a hazardous condition. Therefore, \$1,500.00 is assessed for this factor.


IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: FARMERS CO-OPERATIVE SOCIETY, SIOUX CENTER

5. Section "VII. APPEAL RIGHTS" is rescinded and the following is inserted in lieu thereof:

WAIVER OF APPEAL RIGHTS

This Order is entered into knowingly and with the consent of Farmers. For this reason, Farmers waives its right to appeal this Order and hereby withdraws its appeal of Administrative Order No. 98-AFO-21/98-HC-07 as issued on December 9, 1998.

6. In all other respects, Administrative Order No. 98-AFO-21/98-HC-07 remains in full force and effect.



PAUL W. JOHNSON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

4-13-99
DATE

X  President

JERIS VERMEER, PRESIDENT
FARMERS CO-OPERATIVE SOCIETY,
SIOUX CENTER

4/5/99
DATE

**Authorization From the Iowa Department of Natural Resources
To Discharge Under The National Pollutant Discharge Elimination System**

PERMITTEE

Coop Confinement Feedlot
317 3rd St. NW.
Sioux Center, Iowa 51250

IDENTITY AND LOCATION OF FACILITY

Coop Confinement Feedlot
Feedlot Runoff Control Facility for a
2,000 Head Beef Cattle, 6.00 acre Open Feedlot,
SW ¼, Section 36, Plato Township, Sioux
County, Iowa

IOWA NPDES PERMIT NUMBER: 84-00-0-12
RECEIVING WATERCOURSE: Sixmile Creek
DATE OF ISSUANCE: 10-6-2000
DATE OF EXPIRATION: 10-5-2005

YOU ARE REQUIRED TO FILE FOR RENEWAL OF THIS PERMIT BY:
April 5, 2005

The designated stream is: Sixmile Creek, which is designated Class B(LR), Limited Resources. Class B(LR) waters are waters in which flow or other physical characteristics limit the ability of the water body to maintain a balanced warm water community. Such waters support only populations composed of species able to survive and reproduce in a wide range of physical and chemical conditions, and are not generally harvested for human consumption.

This permit is issued pursuant to the authority of section 402(b) of the Clean Water Act (33 U.S.C 1342(b)), Iowa Code section 455B.174 and rule 567--64.3, Iowa Administrative Code. You are authorized to operate the feedlot runoff control system and to discharge the pollutants specified in this permit in accordance with the effluent limitations, monitoring requirements and other terms set forth in this permit.

You may appeal any condition of this permit by filing a written notice of appeal and request for administrative hearing with the director of this department within 30 days of your receipt of this permit.

Any existing, unexpired Iowa operation permit or Iowa NPDES permit previously issued by the department for the facility identified above is revoked by the issuance of this Iowa NPDES operation permit unless the facility is being upgraded or replaced by a new facility; then the existing permit will remain in effect until the new facility is completed and in operation.

PART I: SPECIAL CONDITIONS (Conditions Applicable to the Feedlot Runoff Control Facility)

I. Discharge Limitations:

Discharge shall be limited to the overflow of a runoff retention structure(s) designed and operated as specified in II and III below.

II. Minimum Design Storage Requirements:

Subrule 65.2(2) requires that sufficient design storage must be provided to contain all runoff from the feedlot and any undiverted upland drainage areas or roofed areas resulting from the 25-year, 24-hour precipitation event (5 inches of rain). As a once per year disposal system, if your runoff control system meets the detailed system requirements of system one: One Manure Application Period Per Year, as listed in Appendix A, Chapter 65(attached), you shall be considered to be in compliance with subrule 65.2(2) unless discharges from the manure control facility cause a violation of state water quality standard.

III. Minimum Operation Requirements:

Manure must be removed from the manure control system and disposed of by land application in accordance with the following requirements:

- A. Solids Settling structures: Collected manure solids must be removed as necessary to maintain adequate solids storage capacity for future runoff events. As a minimum, accumulated solids shall be removed at least once per year.
- B. Runoff Control Basin: The runoff control basin shall be operated to provide retention of all manure flows from the feedlot areas and all other manure-contributing areas resulting from the 25-year, 24-hour precipitation event (subrule 65.2(2)). If the runoff control basin is operated to meet the detailed system requirements of system one: One manure Application Period Per Year, as listed in Appendix A, chapter 65 (attached), you shall be considered to be in compliance with subrule 65.2(2) unless discharges from the manure control facility cause a violation of state water quality standards.
- C. Whenever manure is removed from the feedlot areas or the runoff control system, it shall be disposed of by land application in a manner which will not cause surface or ground water pollution. It is recommended that land application be conducted in accordance with the recommended practices on land disposal of manure (567-65.3(4)IAC). A copy of these recommended practices is included as an attachment to this amended permit.

D. The minimum land area required for total manure disposal (liquid and solids) shall be determined based on a nutrient analysis of the manure prior to disposal. It is recommended that a more accurate determination of the required disposal area be made, based on a nutrient analysis of the manure prior to disposal and a nutrient analysis of the disposal area soils. It is also recommended that manure disposal rates be based on the nutrient uptake needs of the disposal area crop.

IV. Schedule of Compliance:

The permittee shall achieve compliance with the discharge limitations, monitoring requirements and other stipulations on effective date of the permit.

V. Monitoring and reporting requirements:

A. Representative Measurement

Measurements taken as required herein shall be representative of the nature of the monitored item.

B. Recording of Results

For each measurement taken pursuant to the requirements of this permit, the permittee shall record the exact place, date and time of measurement.

C. Records Retention

All records and information resulting from the monitoring activities required by this permit shall be retained by the permittee for a minimum of three (3) years, or longer if requested by this department.

D. Monitoring Requirements

1. The permittee shall monitor and record precipitation daily using a National Weather Service standard rain gauge, or equivalent if he elects to maintain a precipitation gauge at the facility.
2. The official precipitation gauge for this permit shall be Sioux Center, Iowa.
3. The permittee shall monitor and record the liquid level in the runoff retention structure(s) daily when the structure has less than the minimum design storage required and weekly when more than the minimum design storage is available. These records shall be submitted quarterly* to this department.

4. The permittee shall monitor and record daily the rates and areas of liquid disposal. These records shall be submitted quarterly* to this department.

*The quarterly reports shall cover the periods January through March, April through June, July through September and October through December. The quarterly report for each period shall be submitted by the 10th day of the month following the quarter being reported.

E. Reports required herein shall be submitted, as appropriate, to this department at the following address:

Iowa Department of Natural Resources
Field Office #3
1900 N. Grand Ave.
Spencer, Iowa 51301

VI. Discharge Reporting:

The permittee shall report the direct discharge of feedlot runoff from his property within 24 hours of the initiation of the discharge by calling this department at 712/262-4177, regardless of whether the discharge originates from the runoff retention facilities or from the liquid disposal areas. This report should contain the period of time over which the discharge occurred, the approximate flow or the volume of the discharge and, if it has not ceased at the time of reporting, the expected duration of the discharge. The absence of any reported discharge during any 12 month period shall be deemed to constitute a formal report that no discharge occurred for that period.

VII. Expiration:

This permit shall expire on October 5, 2005. The permittee shall file for reissuance of this permit at least 180 days prior to its expiration. Continued operation of said disposal system after expiration of this permit is prohibited.

PART II: GENERAL PERMIT CONDITIONS

1. The discharge of manure or feedlot runoff more frequently than, or at a level in excess of that authorized herein, shall constitute a violation of this permit. The permittee shall report to the director, in writing, at least 180 days in advance of any facility expansion, production increase or process modification which would materially affect the manure disposal system covered by this permit.
2. If, for any reason, the permittee does not comply with any condition specified in this permit, the permittee shall provide the director with the following information, in writing, within five (5) days of becoming aware of such noncompliance:
 - a. A description and cause of such noncompliance; and
 - b. The period of noncompliance, including exact dates and times; or, if not corrected, the anticipated time to reduce, eliminate and prevent recurrence of the noncomplying discharge.
3. The permittee shall at all times maintain in good working order and operate as efficiently as possible all treatment or control facilities or systems installed or used by the permittee to achieve compliance with the terms and conditions of this permit.
4. If title to the facility, disposal system or part thereof for which this permit has been issued is transferred, the permittee shall notify the new owner in writing of this permit and the new owner shall be subject to achieve compliance with the terms and conditions of this permit. Whenever title to the facility, disposal system or part thereof is transferred, the director shall be notified of such transfer within thirty (30) days.
5. After notice and opportunity for a hearing, this permit may be modified, suspended or revoked in whole or in part during its term for cause, including but not limited to the following:
 - a. Violation of any terms or conditions of this permit;
 - b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
 - c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
6. Notwithstanding 5 above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Federal Water Pollution Control Act for a toxic pollutant which is present in the discharge and such standard or prohibition is more stringent than any limitation for such

pollutant in this permit, this permit shall be revised or modified in accordance with the toxic effluent standard or prohibition and the permittee so notified.

7. The permittee shall allow the director and/or his authorized representatives, upon the presentation of credentials;
 - a. To enter upon the permittee's premises where an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit; and
 - b. At reasonable times, to have access to copy any records required to be kept under the terms and conditions of this permit, to inspect any monitoring equipment or monitoring method required in this permit and to sample any discharge of pollutants.
8. This permit does not authorize or approve the construction, modification or addition to any disposal system or facility. No alterations or additions to any disposal system shall be made without the written consent of this department.
9. The provisions of this permit are severable. If any provisions of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the remainder of this permit shall not be affected thereby.
10. No legal or financial responsibility arising from the operation or maintenance of any disposal system or part thereof installed by the permittee to achieve compliance with the conditions of this permit shall attach to the State of Iowa or the Department of Natural Resources.
11. The issuance of this permit in no way relieves the permittee of the responsibility for complying with all local, state and federal laws, ordinances, regulations and other requirements applying to the operation of this facility.

For the Department of Natural Resources:

JEFFREY R. VONK, Director

By: *Paul M. Evans*
for Wayne Furrand

Environmental Protection Division
Wastewater Section

STANDARD CONDITIONS

1. DEFINITIONS

(a) 7 day average means the sum of the total daily discharges by mass, volume or concentration during a 7 consecutive day period, divided by the total number of days during the period that measurements were made. Four 7 consecutive day periods shall be used each month to calculate the 7-day average. The first 7-day period shall begin with the first day of the month.

(b) 30 day average means the sum of the total daily discharges by mass, volume or concentration during a calendar month, divided by the total number of days during the month that measurements were made.

(c) daily maximum means the total discharge by mass, volume or concentration during a twenty-four hour period.

2. DUTY TO COMPLY

You must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Issuance of this permit does not relieve you of the responsibility to comply with all local, state and federal laws, ordinances, regulations or other legal requirements applying to the operation of your facility.
{See 40 CFR 122.41(a) and 567-64.3(11) IAC}

3. DUTY TO REAPPLY

If you wish to continue to discharge after the expiration date of this permit you must file an application for reissuance at least 180 days prior to the expiration date of this permit.
{See 567-64.8(1) IAC}

4. NEED TO HALT OR REDUCE ACTIVITY

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
{See 567-64.7(5)(f) IAC}

5. DUTY TO MITIGATE

You shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
{See 567-64.7(5)(i) IAC}

6. PROPERTY RIGHTS

This permit does not convey any property rights of any sort or any exclusive privileges.

7. TRANSFER OF TITLE

If title to your facility, or any part of it, is transferred the new owner shall be subject to this permit.
{See 567-64.14 IAC}

You are required to notify the new owner of the requirements of this permit in writing prior to any transfer of title. The Director shall be notified in writing within 30 days of the transfer

8. PROPER OPERATION AND MAINTENANCE

All facilities and control systems shall be operated as efficiently as possible and maintained in good working order. A sufficient number of staff, adequately trained and knowledgeable in the operation of your facility shall be retained at all times and adequate laboratory controls and appropriate quality assurance procedures shall be provided to maintain compliance with the conditions of this permit.
{See 40 CFR 122.41(e) and 567 64.7(5)(f) IAC}

9. DUTY TO PROVIDE INFORMATION

You must furnish to the Director, within a reasonable time, any information the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. You must also furnish to the Director, upon request, copies of any records required to be kept by this permit.

10. MAINTENANCE OF RECORDS

You are required to maintain records of your operation in accordance with 567-63.2 IAC.

11. PERMIT MODIFICATION, SUSPENSION OR REVOCATION

(a) This permit may be modified, suspended, or revoked and reissued for cause including but not limited to those specified in 567-64.3(11) IAC.

(b) This permit may be modified due to conditions or information on which this permit is based, including any new standard the department may adopt that would change the required effluent limits.
{See 567-64.3(11) IAC}

(c) If a toxic pollutant is present in your discharge and more stringent standards for toxic pollutants are established under Section 307(a) of the Clean Water Act, this permit will be modified in accordance with the new standards.
{See 567-64.7(5)(g) IAC}

The filing of a request for a permit modification, revocation or suspension, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

12. SEVERABILITY

The provisions of this permit are severable and if any provision or application of any provision to any circumstance is found to be invalid by this department or a court of law, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected by such finding.

STANDARD CONDITIONS

13. INSPECTION OF PREMISES, RECORDS, EQUIPMENT, METHODS AND DISCHARGES

You are required to permit authorized personnel to:

- (a) Enter upon the premises where a regulated facility or activity is located or conducted or where records are kept under conditions of this permit.
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit.
- (c) Inspect, at reasonable times, any facilities, equipment, practices or operations regulated or required under this permit.
- (d) Sample or monitor, at reasonable times, for the purpose of assuring compliance or as otherwise authorized by the Clean Water Act.

14. TWENTY-FOUR HOUR REPORTING

You shall report any noncompliance that may endanger human health or the environment. Information shall be provided orally within 24 hours from the time you become aware of the circumstances. A written submission that includes a description of noncompliance and its cause; the period of noncompliance including exact dates and times, whether the noncompliance has been corrected or the anticipated time it is expected to continue; and the steps taken or planned to reduce, eliminate, and prevent a reoccurrence of the noncompliance must be provided within 5 days of the occurrence. The following instances of noncompliance must be reported within 24 hours of occurrence:

- (a) Any unanticipated bypass which exceeds any effluent limitation in the permit.
{See 40 CFR 122.44(g)}
- (b) Any upset which exceeds any effluent limitation in the permit.
{See 40 CFR 122.44(n)}
- (c) Any violation of a maximum daily discharge limit for any of the pollutants listed by the Director in the permit to be reported within 24 hours.
{See 40 CFR 122.44(g)}

15. OTHER NONCOMPLIANCE

You shall report all instances of noncompliance not reported under Condition #14 at the time monitoring reports are submitted.

16. ADMINISTRATIVE RULES

Rules of this Department which govern the operation of your facility in connection with this permit are published in Part 567 of the Iowa Administrative Code (IAC) in Chapters 60-64 and 120-122. Reference to the term "rule" in this permit means the designated provision of Part 567 of the Iowa Administrative Code.

17. NOTICE OF CHANGED CONDITIONS

You are required to report any changes in existing conditions or information on which this permit is based:

- (a) Facility expansions, production increases or process modifications which may result in new or increased discharges of pollutants must be reported to the Director in advance. If such discharges will exceed effluent limitations, your report must include an application for a new permit.
{See 567-64.7(5)(a) IAC}
 - (b) If any modification of, addition to, or construction of a disposal system is to be made, you must first obtain a written permit from this Department.
{See 567-64.2 IAC}
 - (c) If your facility is a publicly owned treatment works or otherwise may accept waste for treatment from industrial contributors see 567-64.3(5) IAC for further notice requirements.
 - (d) You shall notify the Director as soon as you know or have reason to believe that any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in this permit.
{See 40 CFR 122.42(a)}
- You must also notify the Director if you have begun or will begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application

18. OTHER INFORMATION

Where you become aware that you failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report, you must promptly submit such facts or information.

STANDARD CONDITIONS

19. UPSET PROVISION

(a) Definition - "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense in an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph "c" of this condition are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(c) Conditions necessary for demonstration of an upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that;

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset.
- (2) The permitted facility was at the time being properly operated; and
- (3) The permittee submitted notice of the upset to the Department in accordance with 40 CFR 122.41(l)(6)(ii)(B).
- (4) The permittee complied with any remedial measures required by Item #5 of the Standard Conditions of this permit.

(d) Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

20. FAILURE TO SUBMIT FEES

This permit may be revoked, in whole or in part, if the appropriate permit fees are not submitted within thirty (30) days of the date of notification that such fees are due.

21. BYPASSES

(a) Definition - Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(b) Prohibition of bypass, Bypass is prohibited and the department may take enforcement action against a permittee for bypass unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance;

(3) The permittee submitted notices as required by paragraph "d" of this section.

(c) The Director may approve an anticipated bypass after considering its adverse effects if the Director determines that it will meet the three conditions listed above.

(d) Reporting bypasses. Bypasses shall be reported in accordance with 567-63.6 IAC.

22. SIGNATORY REQUIREMENTS

Applications, reports or other information submitted to the Department in connection with this permit must be signed and certified as required by 567-64.3(8) IAC.

23. USE OF CERTIFIED LABORATORIES

Effective October 1, 1996, analyses of wastewater, groundwater or sewage sludge that are required to be submitted to the department as a result of this permit must be performed by a laboratory certified by the State of Iowa. Routine, on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine and other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements, and operational monitoring tests specified in 567-63.3(4) are excluded from this requirement.